

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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TABETHA A. TANNER,

Plaintiff,

v.

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

Defendant

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 5552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from the Plaintiff, Tabettha A. Tanner, Esq., by the Defendant, the Executive Office for Immigration Review.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e), as Plaintiff resides and has her principal place of business in Camp Hill, Pennsylvania, which lies within this jurisdiction.
3. Plaintiff seeks declaratory relief under 28 U.S.C. §§ 2201-2202 and Rule 57 of

the Federal Rules of Civil Procedure.

### **PARTIES**

4. The Plaintiff, Tabettha A. Tanner, Esq., is a native and citizen of the United States of America. Plaintiff is the requester of the records being improperly withheld by the Defendant. Plaintiff is requesting records on behalf of her client, Myrlande Jean, the Subject of Record of the Request.

5. The Defendant, the Executive Office for Immigration Review (“EOIR”), is an agency of the Executive Branch of the United States Government, under the Department of Justice. EOIR is an agency within the meaning of 5 U.S.C. § 552(f)(1). EOIR has possession, custody, and control of records to which the Plaintiff seeks access.

### **STATEMENT OF FACTS**

6. On December 1, 2020, Plaintiff sent via United States Postal Service, a FOIA request to EOIR requesting copies of “all information regarding the Removal Proceedings of Myrlande, including but not limited to, the Removal Docket, Notice to Appear, Applications, Court Documents, etc.” The Subject of Record’s signed Certification of Identity was attached to the FOIA request. (Exhibit “A”)

7. On December 14, 2020, Plaintiff received an email from Defendant that acknowledged receipt of Plaintiff’s FOIA request on December 9, 2020. The letter assigned the request Case Control Number 2021-09286. (Exhibit “B”)

8. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to respond to Plaintiff’s FOIA request within twenty (20) working days from receipt of the FOIA Appeal, that is January 13, 2021.

9. On October 21, 2021, Plaintiff, having not received a response, sent via

the EOIR online FOIA Portal, a copy of the FOIA request sent by mail, in an attempt to get a response from EOIR.

10. On October 25, 2021, Plaintiff received an email from Defendant that stated in part that “it has been determined that you filed a previous FOIA request in which our office responded by sending you a letter indicating that your request was being processed under control number 2021-09286. Therefore, this FOIA request is being closed as a duplicate request.” (Exhibit “C”)

11. As of the date of this complaint, Defendant has failed to produce any records responsive to Plaintiff’s request or demonstrate that responsive records are exempt from production. Nor has Defendant indicated whether or when any responsive records will be produced. Moreover, neither Plaintiff nor Subject of Record has received any further communication from Defendant.

12. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to her FOIA request. See 5 U.S.C. § 552(a)(6)(C).

### **COUNT 1**

(Violation of FOIA, 5 U.S.C. § 552)

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

14. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

15. Plaintiff is being irreparably harmed by reason of Defendant’s unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

16. Defendant has violated the FOIA by failing to produce any and all nonexempt records responsive to Plaintiff's FOIA request within the twenty (20)-day time period set forth at 5 U.S.C. § 552(a)(6)(A)(i).

**PRAYER**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

1. Order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;
2. Order Defendant to produce, by a date certain, any and all nonexempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
3. Enjoin Defendant from continuing to withhold any and all nonexempt records responsive to Plaintiff's FOIA request;
4. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 22<sup>nd</sup> day of August, 2022,

Tabetha A. Tanner

Tabetha A. Tanner, Esq., Plaintiff

Tanner Law Offices, LLC.

2145 Market St.

Camp Hill, PA 17011

(717)731-8114

**LIST OF ATTACHMENTS**

Exhibit	Description of Exhibit
A	Copy of the FOIA Request sent to EOIR on December 1, 2020
B	Copy of the Email confirmation received by Plaintiff on December 14, 2020
C	Copy of the Email refusing the second FOIA request received by Plaintiff on October 21, 2021





December 1, 2020

Office of the General Counsel  
Attn: FOIA Service Center  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 1903  
Falls Church, VA 22041

*Re: Certification of Identity*  
*Authorization to Release Information to Another Person*  
*Re: Myrlande Jean*  
*Alien No.: 076-894-207*

Dear Sir or Madam:

Enclosed please find the following documents:

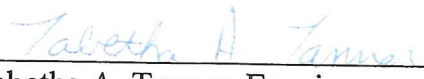
1. Form DOJ-361 "Certification of Identity/Authorization to Release Information to Another Person";
2. A copy of EOIR-28, evidencing my representation of Ms. Jean.

We are requesting all information regarding the Removal Proceedings of Myrlande, including but not limited to, the Removal Docket, Notice to Appear, Applications, Court Documents, etc. We believe that these removal proceedings took place in Miami, FL.

Please forward the requested documentation to my attention at your earliest convenience.

If you have any questions or concerns, please feel free to contact me.

Very truly yours,

  
Tabetha A. Tanner, Esquire

ENCLOSURES  
TAT/tw

U.S Department of Justice

## Certification of Identity

FORM APPROVED OMB NO. 1103-0016  
EXPIRES 05/31/2023

**Privacy Act Statement.** In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester <sup>1</sup> Myrlande JeanCitizenship Status <sup>2</sup> TPSSocial Security Number <sup>3</sup> 590-85-2602Current Address 105 S. White St., Shenandoah, PA 17976Date of Birth 02/28/1965Place of Birth Port-au-Prince, Haiti**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Tabetha A. Tanner, Tanner Law Offices, 2145 Market St., Camp Hill, PA 17011  
Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature <sup>4</sup> Myrlande JeanDate 11-30-2020

<sup>1</sup> Name of individual who is the subject of the record(s) sought.

<sup>2</sup> Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

<sup>3</sup> Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

<sup>4</sup> Signature of individual who is the subject of the record sought.



## Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

Form EOIR - 28  
Rev. Dec. 2015



**Indicate Type of Appearance:**

☒ Primary Attorney/Representative      ☐ Non-Primary Attorney/Representative

☐ On behalf of \_\_\_\_\_ (Attorney's Name) for the following hearing: \_\_\_\_\_ (Date)

I am providing pro bono representation. Check one: ☐ yes ☒ no

**Proof of Service**

I (Name) Tabetha A Tanner mailed or delivered a copy of this Form EOIR-28 on (Date) 12/01/2020 to the DHS (U.S. Immigration and Customs Enforcement – ICE) at 333 S. Miami Ave., Suite 200, Miami, FL 33130

**X** Tabetha A Tanner  
Signature of Person Serving

**APPEARANCES** - An attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 C.F.R. § 1292.1(f)). Registration must be completed online on the EOIR website at [www.justice.gov/eoir](http://www.justice.gov/eoir). An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 C.F.R. § 1003.17). A Form EOIR-28 shall be filed either as an electronic form, or as a paper form, as appropriate (for further information, please see the Immigration Court Practice Manual, which is available on the EOIR website at [www.justice.gov/eoir](http://www.justice.gov/eoir)). The attorney or representative must check the box indicating whether the entry of appearance is for custody and bond proceedings only, for all proceedings other than custody and bond, or for all proceedings including custody and bond. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals and will comply with the EOIR Rules of Professional Conduct in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon the approval of the Immigration Judge of a request by the attorney or representative of record in accordance with 8 C.F.R. § 1003.17(b). Please note that although separate appearances in custody and non-custody proceedings are permitted, appearances for limited purposes within those proceedings are not permitted. See *Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). A separate appearance form (Form EOIR-27) must be filed with an appeal to the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)). Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-28 that reflects a new address.

**FREEDOM OF INFORMATION ACT** - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is in 28 C.F.R. §§ 16.1-16.11 and appendices. For further information about requesting records from EOIR under the Freedom of Information Act, see *How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review*, available on EOIR's website at <http://www.justice.gov/eoir>.

**PRIVACY ACT NOTICE** - The information requested on this form is authorized by 8 U.S.C. §§ 1229(a), 1362 and 8 C.F.R. § 1003.17 in order to enter an appearance to represent a party before the Immigration Court. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notice of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), or its successors and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999). Furthermore, the submission of this form acknowledges that an attorney or representative will be subject to the disciplinary rules and procedures at 8 C.F.R. 1003.101 *et seq.*, including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the attorney or representative and findings of misconduct should the attorney or representative be subject to any public discipline by EOIR.

**CASES BEFORE EOIR** - Automated information about cases before EOIR is available by calling (800) 898-7180 or (240) 314-1500.

**FURTHER INFORMATION** - For further information, please see the *Immigration Court Practice Manual*, which is available on the EOIR website at [www.justice.gov/eoir](http://www.justice.gov/eoir).

**ADDITIONAL INFORMATION:**

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.



**ttanner@tanner-law.com**

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**From:** eoir.foiarequests@usdoj.gov  
**Sent:** Monday, December 14, 2020 11:58 AM  
**To:** ttanner@tanner-law.com  
**Subject:** DOJ-EOIR FOIA Request # 2021-09286

Re: 2021-09286  
Freedom of Information Act Request for JEAN, MYRLANDE

Dear Tabetha A Tanner,

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR) dated 12/09/2020 and received 12/09/2020. Your request has been assigned control number 2021-09286.

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Most requests for records of proceedings do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$.05 per copy. The first 100 copies and two hours of search time are not charged, and charges must exceed \$25.00 before we will charge a fee.

The FOIA requires an agency to respond within 20 working days after receipt of the request, and EOIR endeavors to meet this standard. The FOIA permits a ten-day extension of this time period, pursuant to 5 U.S.C. § 552(a)(6)(B), based on unusual circumstances. Your request involves "unusual circumstances," and EOIR is extending the time period to respond by an additional 10 working days because your request requires the collection of records from field offices, or involves a search, collection, and review of voluminous records, or requires consultation with another agency or two or more agency components.

Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request.

EOIR FOIA requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for simple requests that do not involve voluminous records or lengthy consultations with other entities. Track three is for complex requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests that may involve sensitive records. As a matter of default, your request has been placed in track two for simple requests. If you have requested expedited processing, EOIR will contact you in a separate letter.

If you have any questions regarding unusual circumstances, you may contact the EOIR FOIA Service Center or FOIA Public Liaison at (703) 605-1297 to discuss reformulation or an alternative time frame to process your request, or for any further assistance regarding any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration. Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at (877) 684-6448; or facsimile at (202) 741-5769. 2) 741-5770; toll

**Exhibit "B"**

Sincerely,

FOIA Intake

**From:** [EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov) <[EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov)>

**Sent:** Thursday, October 21, 2021 2:02 PM

**To:** Tabettha A. Tanner <[ttanner@tanner-law.com](mailto:ttanner@tanner-law.com)>

**Subject:** Request Acknowledgement by DOJ-EOIR PAL

Dear Tabettha Tanner,

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR). Your request has been assigned control number 2022-03819.

**Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be significant delay in the processing of your request. If your request is for a Record of Proceeding (ROP), those records ordinarily reside in individual hard-copy Record of Proceeding files located in one of the 66 EOIR Immigration Courts or 15 Federal Records Centers long-term storage facilities geographically located throughout the United States or its territories. Currently, the Immigration Courts and the Federal Records Centers are operating at limited capacity with limited staff and/or are closed due to COVID-19. To check on current operating status for EOIR's Immigration Courts or NARA's Federal Records Centers, please visit <https://www.justice.gov/eoir-operational-status> and <https://www.archives.gov/frc/operating-status>.**

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Most requests for records of proceedings do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$.05 per copy. The first 100 copies and two hours of search time are not charged, and charges must exceed \$25.00 before we will charge a fee.

The FOIA requires an agency to respond within 20 working days after receipt of the request, and EOIR endeavors to meet this standard. The FOIA permits a ten-day extension of this time period, pursuant to 5 U.S.C. § 552(a)(6)(B), based on unusual circumstances. Your request involves "unusual circumstances," and EOIR is extending the time period to respond by an additional 10 working days because your request requires the collection of records from field offices, or involves a search, collection, and review of voluminous records, or requires consultation with another agency or two or more agency components.

EOIR FOIA requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. Track two is for simple requests that do not involve voluminous records or lengthy consultations with other entities. Track three is for complex requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests that may involve sensitive records. If your request is for Record of Proceeding and for contents within, your request is in track two for simple requests. All other requests are in track three for complex requests except those granted expedited processing. If you have requested expedited processing, EOIR will contact you in a separate letter.



If you have any questions regarding unusual circumstances, you may contact the EOIR FOIA Service Center or FOIA Public Liaison at (703) 605-1297 or [EOIR.FOIArequests@usdoj.gov](mailto:EOIR.FOIArequests@usdoj.gov) to discuss reformulation or an alternative time frame to process your request, or for any further assistance regarding any aspect of your request. Alternatively, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

Please use this link to login and check the status of your request  
<https://foia.eoir.justice.gov/>.

Sincerely,  
FOIA Intake

TABETHA A. TANNER,

Plaintiff,

v.

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

Defendant

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of August, 2022 a copy of the foregoing Petition for Review was served by first-class mail, postage prepaid on:

Executive Office for Immigration  
Review  
U.S. Dept. of Justice  
950 Pennsylvania Ave.  
Washington, D.C. 20530-0001

Gerard M. Karam  
United States Attorney  
228 Walnut Street, Suite 220  
P.O. Box 11754  
Harrisburg, PA 17108-1754

Respectfully submitted,

  
Tabetha A. Tanner, Esquire  
PA I.D. No.: 91979  
Plaintiff